STATE OF MICHIGAN

COURT OF APPEALS

In the Matter of INGE KATELYNN STRAMAGLIA, Minor.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

MICHAEL ANTHONY STRAMAGLIA,

Respondent-Appellant.

UNPUBLISHED
May 26, 2005

No. 256133
Macomb Circuit Court
Family Division
LC No. 95-041896-NA

Before: Gage, P.J., and Cavanagh and Griffin, JJ.

PER CURIAM.

Respondent appeals as of right the order terminating his parental rights to the minor child pursuant to MCL 712A.19b(3)(g) (failure to provide proper care and custody) and (j) (reasonable likelihood of harm if child returned to home of parent).[1] We affirm.

Respondent first contends that the trial court's repeated adjournments of the adjudication trial violated former MCR 5.972(A),[2] MCL 712A.17, and his constitutional right to the care and custody of his child. We review for an abuse of discretion the grant or denial of an adjournment. *In re NEGP*, 245 Mich App 126, 134; 626 NW2d 921 (2001); *People v Snider*, 239 Mich App 393, 421; 608 NW2d 502 (2000). A respondent must show prejudice resulting from the trial court's abuse of discretion. *Snider, supra* at 421. Because respondent failed to preserve for appellate review his claim that the adjournments deprived him of his constitutional right to the care and custody of his child, we review that issue for plain error affecting substantial rights. *People v Carines*, 460 Mich 750, 764; 597 NW2d 130 (1999); *People v Gonzalez*, 256 Mich App 212, 225; 663 NW2d 499 (2003).

[1] The circuit court also terminated the parental rights of the child's mother, but she has not appealed that decision and is not a party to this appeal.

[2] Effective May 1, 2003, subchapter 5.900 regarding proceedings in the juvenile division was deleted. Revised versions of most of the rules in that subchapter are now contained in subchapter 3.900. Former MCR 5.972(A) is now MCR 3.972(A).

Respondent has not shown that he was prejudiced by the trial court's adjournments of the adjudication trial. The jury ultimately determined that the trial court had jurisdiction over the child because of the actions of the child's biological mother. Other than for weekend visitation, at no time after the adjudication trial did the trial court release the child to respondent's custody. In addition, the trial court ultimately determined that clear and convincing evidence was presented supporting the termination of respondent's parental rights. Thus, even if the adjournments constituted an abuse of discretion by the trial court, respondent has not demonstrated any prejudice. *Snider, supra* at 421.

Respondent also contends that the repeated adjournments denied him his constitutional right to the care and custody of his daughter. It is undisputed that the Fourteenth Amendment guarantees parents a liberty interest in the care, custody, and control of their children. *Troxel v Granville*, 530 US 57, 65-66; 120 S Ct 2054; 147 L Ed 2d 49 (2000). No plain error affecting respondent's substantial rights occurred. At respondent's preliminary hearing, he waived the probable cause portion of the hearing, and the court thereafter accepted the filing of the petition. Former MCR 5.965(C)[3] authorized the court to place the child with someone other than a parent pending adjudication. At the preliminary hearing, respondent did not request custody of the child pending adjudication, but was concerned only with visitation. Former MCR 5.972(A) authorized the trial court to continue the child's placement upon a finding that returning the child to respondent's custody would likely result in physical harm or serious emotional damage to the child. The Family Independence Agency (FIA) initially sought custody of the child because of respondent's criminal history and his involvement in the removal of the biological mother's other children from her care. Considering the circumstances that led to the FIA's involvement in this case, no plain error affecting respondent's substantial rights occurred when the trial court refused to release the child to his custody pending trial.

Respondent next argues that a trial court's discretion under MCL 712A.6 should be limited such that a court cannot deprive a custodial parent of custody when jurisdiction over a minor child results from abuse or neglect by the noncustodial parent. Because respondent failed to preserve this issue for appellate review, our review is limited to plain error affecting his substantial rights. *Carines, supra* at 764; *Gonzalez, supra* at 225.

At the time of the adjudication trial, MCL 712A.6 provided:[4]

> The court has jurisdiction over adults as provided in this chapter and may make orders affecting adults as in the opinion of the court are necessary for the physical, mental, or moral well-being of a particular juvenile or juveniles under its jurisdiction. However, those orders shall be incidental to the jurisdiction of the court over the juvenile or juveniles.

The above provision clearly indicates that a court has authority to enter orders affecting adults, but that the orders are incidental to the court's jurisdiction over a juvenile. In *In re Macomber*,

[3] An amended version of former MCR 5.965(C) is now MCR 3.965(C).

[4] MCL 712A.6 was amended by PA 2004, No 221, and effective January 1, 2005.

436 Mich 386, 391; 461 NW2d 671 (1990), the Michigan Supreme Court recognized that MCL 712A.6 "provides clear authority for the court to make orders which are necessary for the well-being of a child." Because the court in this case had jurisdiction over the child by virtue of the jury's verdict with respect to the child's biological mother, the court was authorized to enter orders affecting respondent.[5]

When interpreting statutory language, courts must ascertain the legislative intent that may reasonably be inferred from the words in a statute. *Koontz v Ameritech Services, Inc*, 466 Mich 304, 312; 645 NW2d 34 (2002). When the Legislature has unambiguously conveyed its intent, the statute speaks for itself and judicial construction is neither necessary nor permitted. *Id*. Because the proper role of the judiciary is to interpret rather than write the law, courts lack authority to venture beyond a statute's unambiguous language. *Id*.

Respondent is essentially asking this Court to venture beyond the unambiguous language of MCL 712A.6 and "qualify the discretion granted judges" under that section. That section, however, makes no mention of any limitation on a judge's authority with respect to unadjudicated parents. Thus, any court-imposed rule limiting a judge's discretion under MCL 712A.6 would constitute judicial legislation. Although respondent cites *Troxel, supra,* for the proposition that a parent has a fundamental constitutional right in the care and custody of his child, he does not argue that MCL 712A.6 is unconstitutional. Further, although this proposition of *Troxel* is correct, it is a general proposition of law that is not dispositive of this issue. Respondent is seeking a change in the statutory law requiring that children, over whom courts acquire jurisdiction because of the actions of a noncustodial parent, be placed with a custodial parent whose actions did not contribute to the finding of jurisdiction. Respondent's argument is better directed at the Legislature.

Respondent next contends that the original trial judge, Judge Viviano, should have revealed to the parties that he had presided over the foster mother's previous divorce proceeding and that he was acquainted with her family. Because respondent failed to preserve this issue for appellate review, our review is limited to plain error affecting respondent's substantial rights. *Carines, supra* at 764; *Gonzalez, supra* at 225.

While MCR 2.003 states that a judge "may" disqualify himself when he "cannot impartially hear a case," respondent does not contend that Judge Viviano should have disqualified himself under that rule. Rather, it appears that respondent is merely seeking a declaration from this Court that Judge Viviano was required to reveal his previous association with the foster mother and her family. No bright-line rule exists for determining when a judge must reveal the existence of a certain relationship to the parties in a case. Regardless of whether Judge Viviano should have revealed the prior relationship, however, respondent was not prejudiced because Judge Viviano ultimately recused himself and a different judge presided over

[5] See also *In re CR*, 250 Mich App 185, 202 n 35; 646 NW2d 506 (2002), stating that MCL 712A.6 is the statutory corollary of former MCR 5.973(A). That case recognized that, under the court rules, once a court acquired jurisdiction over a child, the court had jurisdiction to determine measures to be taken against *any* adult and the authority to enter orders it deemed necessary in the interest of the child. *Id*. at 202.

respondent's termination trial and terminated respondent's parental rights. Because respondent has not shown any prejudice, no error occurred that affected his substantial rights. In addition, there is no indication in the record that Judge Viviano was biased against respondent or in favor of the foster mother. Rather, it appears that he acted solely in the best interests of the child.

Respondent next contends that the trial court erred by finding that statutory grounds for termination were proven by clear and convincing, legally admissible evidence. In order to terminate parental rights, the trial court must find that at least one of the statutory grounds for termination under MCL 712A.19b(3) has been proven by clear and convincing evidence. *In re CR*, 250 Mich App 185, 194-195; 646 NW2d 506 (2002); *In re Pardee*, 190 Mich App 243, 250; 475 NW2d 870 (1991). We review for clear error a trial court's decision that clear and convincing evidence supported a statutory ground for termination of parental rights. MCR 3.977(J); *In re JK*, 468 Mich 202, 209; 661 NW2d 216 (2003). A trial court's factual findings are clearly erroneous if, although some evidence exists to support the findings, we are left with a definite and firm conviction that a mistake has been made. *In re Pardee*, *supra* at 250.

Petitioner presented clear and convincing, legally admissible evidence to support termination of respondent's parental rights under MCL 712A.19b(3)(g) and (j). With respect to subsection g, the evidence clearly showed that respondent would not be able to provide proper care and custody for his daughter within a reasonable time considering the child's age. Respondent changed his residence no less than four times throughout the duration of the lower court proceedings. At the time of the termination trial, foster care worker Steven Haag did not know where respondent was living. Haag had received information that respondent was renting a trailer in Harrison Township at that time, but he was also informed that respondent was living with his mother. Respondent did not provide Haag with verification of his residence and had not provided such verification since January or February 2003.

In addition, respondent did not establish the financial ability to care for the child. Respondent verified less than $3,000 in income from July 2002 until the termination trial in December 2003 and January 2004. In addition, respondent admitted that he was responsible for $9 or 10 million of a $33 million outstanding judgment. Thus, respondent has not demonstrated a financial ability to care for the child. Accordingly, petitioner presented clear and convincing evidence supporting termination of respondent's parental rights pursuant to MCL 712A.19b(3)(g).

Petitioner also presented clear and convincing evidence supporting termination under subsection j. A reasonable likelihood of harm to the child existed because of respondent's drug use, failure to participate in random drug and alcohol screening, and questionable AA attendance. The trial court heard testimony that respondent's February 10, 2003, drug test was positive for cocaine. Although respondent contends that this testimony was inadmissible hearsay, it was merely cumulative of the business record that was admitted at trial evidencing respondent's positive drug test. Business records are admissible under MRE 803(6). In addition, Haag testified regarding the positive drug test and indicated that respondent failed to call every weekday for random drug testing as required under the parent-agency agreement. Haag testified that respondent accused him of bribing the laboratory to falsify the test result, and, at trial, respondent denied testing positive for cocaine.

In addition to random drug testing, respondent failed to attend three AA meetings per week as required under the parent-agency agreement, or even the lower standard of two meetings per month as recommended by the substance abuse assessment. At the time of trial, respondent had attended less than twenty meetings since May 2002, and the authenticity of the AA sign-in sheet verifying respondent's attendance was questionable. Given that the sign-in sheet listed the wrong year, contained a date that did not exist in either 2002 or 2003, and indicated respondent's attendance for a future date that had not yet occurred, the trial court's finding that the sign-in sheet was fraudulent was not clearly erroneous. Because respondent failed to follow through with random drug and alcohol screening and tested positive for cocaine during the pendency of the petition, a reasonable likelihood of harm existed if the child was returned to respondent's care.

Affirmed.

/s/ Hilda R. Gage
/s/ Mark J. Cavanagh
/s/ Richard Allen Griffin